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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re M.M., a Minor

R.G. et al.,

Petitioners and Respondents,

v.

W.T.,

Objector and Appellant.

F057619

(Super. Ct. No. MAD001742)

**ORDER MODIFYING OPINION
AND DENYING REHEARING**

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on March 11, 2010, be modified as follows:

1. On page 3, the first full paragraph beginning “Regrettably, we see” is deleted and the following paragraph inserted in its place:

Regrettably, we see no path to avoid the plain language of the statute. The judgment in W.T.’s Family Code section 7631 action is not yet final, and will not be final until all of his appeals are exhausted. Code of Civil Procedure section 577 defines a judgment as “the final determination of the rights of the parties in an action or proceeding.” A judgment is not final until an appeal from the trial court judgment has been exhausted or the time for appeal has expired. (*Franklin & Franklin v. 7-Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1168, 1174.) While *Franklin & Franklin* was addressing the finality of a judgment for the purposes of application of the principles of res judicata, the principle is equally

applicable here. W.T. has not exhausted all possibility of attack on the trial court's judgment.

2. On page 4, the first full paragraph beginning "Next, R.G. argues" is deleted and the following paragraph inserted in its place:

Next, R.G. argues, without the benefit of authority, that section 7631's requirement that any adoption proceedings be suspended until the judgment in the section 7631 action is final does not mean that all appellate remedies must be exhausted. R.G. cannot provide any logical justification for allowing an adoption to proceed when it may have to be vacated if the appellate court finds the section 7631 petition has merit. One of the purposes of adoption is to provide stability to a child's life. Completing an adoption that may have to be vacated does not add stability to a child's life.

3. On page 5, under the heading "DISPOSITION," the sentence beginning "The orders" is deleted and the following sentence inserted in its place:

The orders of the family court are reversed as void because the action is suspended until the judgment on the section 7631 petition becomes final by the exhaustion of all appellate remedies. W.T. is awarded his costs on appeal.

There is no change in judgment. Petitioners and Respondents' petition for rehearing is denied.

CORNELL, J.

WE CONCUR:

WISEMAN, Acting P.J.

POOCHIGIAN, J.